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PATENT  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANT : JOSEPH E. PORCELLI  
SERIAL NO. : 09/356,771  
FILED : JULY 16, 1999  
TITLE : CAR AND TRUCK BEVERAGE HOLDER  
EXAMINER : BRADLEY DUCKWORTH  
ART UNIT NO. : 3632

REPLY BRIEF

Further to the Appeal Brief filed by Appellant on March 4, 2010, this is a Reply Brief in response to the Examiner's Answer dated May 6, 2010.

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## **I. STATUS OF CLAIMS**

Claims 1-17, 19 and 23 have been canceled from the application. Claims 18 and 20-22 are the only remaining claims in the application and were finally rejected in the Office Action dated August 11, 2009. A copy of the appealed claims are attached in the CLAIM APPENDIX submitted previously with the Appeal Brief filed March 4, 2010. The status of the claims on appeal is:

Claims rejected: 18 and 20-22

Claims cancelled: 1-17, 19 and 23

The rejections of Claims 18 and 20-22 are being appealed.

## **II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

A. Whether Claims 18 and 20 are unpatentable under 35 U.S.C. §103(a) over Hartmann et al. (USPN 5,938,160) in view of Jackson (U.S. Design Patent No. D 228,335), and further in view of Bieck et al. (USPN 5,839,711).

B. Whether Claim 21 is unpatentable under 35 U.S.C. §103(a) over Miller et al. (USPN 5,297,767) in view of Jackson, and further in view of Bieck et al.

C. Whether Claim 22 is unpatentable under 35 U.S.C. §103(a) over Miller et al. in view of Jackson, in view of Bieck et al. and further in view of Pratt (USPN 4,530,480).

### III. ARGUMENTS

The Examiner's Answer is in error in that it sets forth that :

- Bieck teaches V-shaped fingers;
- Bieck teaches fingers which define a point, which extends radially inward towards the center of the opening of the container; and
- One of ordinary skill in the art would recognize the interchangeability of the fingers in Hartman with those in Bieck.

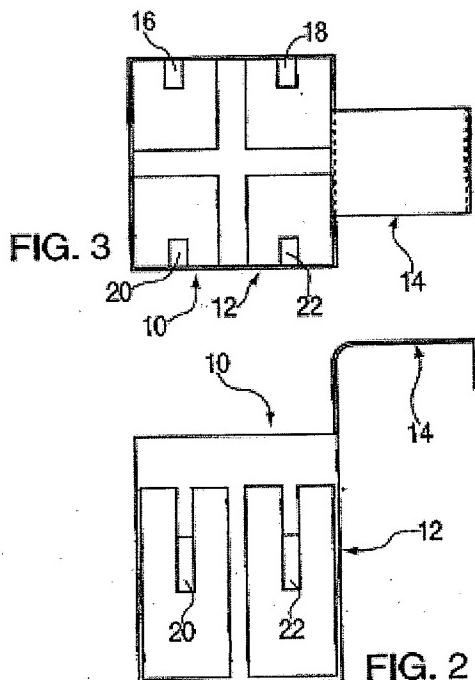
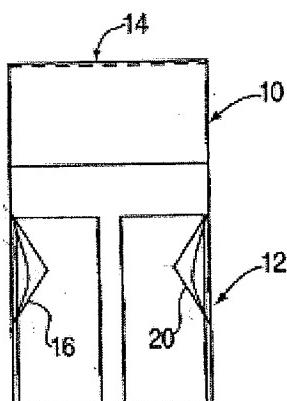
It is respectfully submitted that none of the references teach resilient, V-shaped, flat fingers which define a point which extends radially inward as required by the claims, and therefore, even in combination fail to disclose or suggest the present invention.

The presently claimed invention requires "resilient, V-shaped, flat fingers, each having an upper fixed end which is coupled to said top edge border of said rectangular basket and a lower free end extending generally downward into one of said side wall openings of said rectangular basket, said fingers each defining a point of a V between said ends thereof and having a V-shaped profile when viewed in a vertical plane with the point of the V extending radially inward generally towards the center of the rectangular opening" (emphasis added). As seen in Figs. 1-3 duplicated below, these V-shaped fingers form a biasing structure for releasably supporting a beverage

container when inserted into the rectangular basket and cooperate to resiliently and releasably grasp both round and square beverage containers (pg. 9, lines 10-13).

**PORCELLI (USPN 09/356,771)**

**FIGS. 1-3**



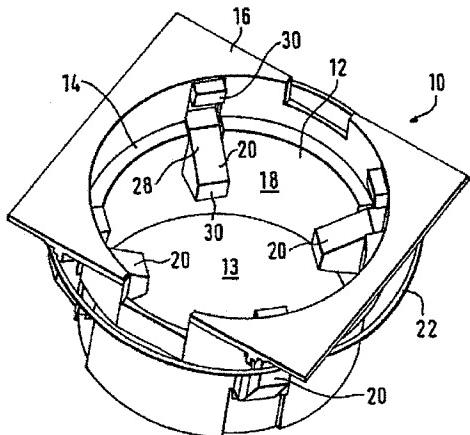
In regard to the rejection of Claims 18 and 20, the Examiner concedes that Hartmann and Jackson do not disclose V-shaped fingers. However, the Examiner is wrong in contending that Bieck discloses V-shaped fingers. More particularly, the Examiner indicates on page 7 of the Examiner's Answer that the jaws in Bieck define a "flat wide V-shape" and "also define a point, which could be any point, on the V-shaped fingers that points inward." However, contrary to the Examiner's assertion the jaws in Bieck are not equivalent to the claimed fingers because they are not "V"

shaped and Bieck does not disclose or suggest this V-shape profile or a point of a V extending radially inward generally towards the center of the rectangular opening, as required by the claims.

In particular, as seen below in Fig. 2 of Bieck the fingers are not V-shaped as required by the claims, since each of the holding jaws 20 has two flat inner support surfaces 30 which contacts the beverage container.

BIECK ET AL. (USPN 5,839,711)

FIG. 2



Furthermore, as seen above, Bieck does not have a V-shaped profile when viewed in a vertical plane also as required by the claims. V-shaped by its plain meaning, indicates two inclined faces meeting at a single point, which is not the case in Bieck. Instead, the jaws 20 have flat supporting surfaces 30 which are located at secant planes of the container receptacle 12 (see, col. 2, lines 55-58). Thus, Bieck alone or in combination with the other cited references does not disclose or suggest

V-shaped fingers, since Bieck specifically provides for flat inner supporting surfaces 30.

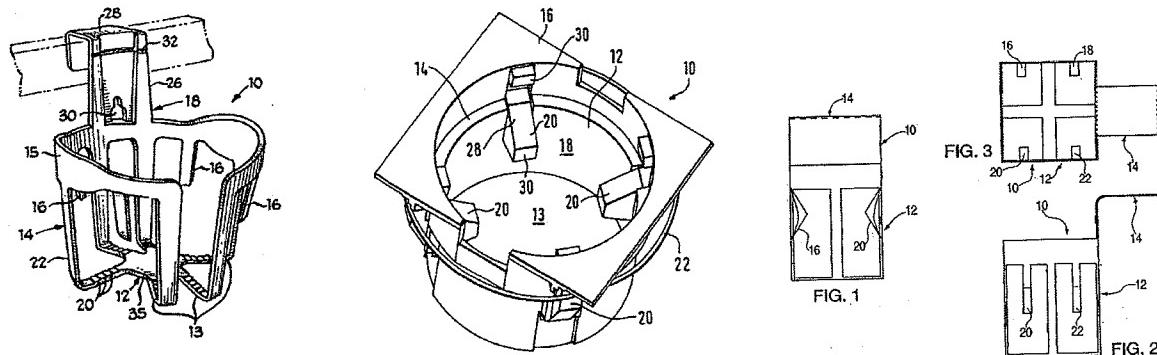
Moreover, the Examiner is wrong in contending that Bieck teaches that the fingers define a point of a V between the ends thereof or that the point of the V extends radially inward generally towards the center of the rectangular opening. A "point" is defined as a geometric element that has zero dimensions and a location determinable by an ordered set of coordinates (See, Merriam-Webster definition attached hereto). The point cannot be any point on the V-shaped fingers that point inward, as contended by the Examiner, because there are no points in Bieck that point inward towards the center, since the inner supporting surfaces 30 are flat.

Moreover, Bieck specifically provides for two supporting surfaces 30 on each of the locking jaws 20 (see, col. 2, lines 52-53). These supporting surfaces are located at different radii and are provided for different beverage containers of varying diameters (see, col. 2, lines 55-58). The present invention eliminates the need for more than one set of fingers, as in Bieck, by providing the claimed flat, resilient V-shaped fingers which resiliently retract to accommodate the variable width and contour of a round or square bottle or container to secure it in the holder.

Because in Bieck the locking jaws 20 are spring loaded, Bieck requires a complex arrangement of the holding jaw 20, spring ring 22, pegs 24, and guides 26 in order to bias the jaws to accommodate the various beverage containers. Instead, by merely providing resilient, V-shaped, flat fingers according to the present invention,

the invention is simplified and is easier and less expensive to manufacture.

Furthermore, the Examiner is wrong in contending that in regard to Claims 18 and 20, it would be obvious to one having ordinary skill in the art to combine Hartmann with Bieck. It would not be obvious to do so since the finger or grasping structures in these references operate in completely different manners. As seen below, combining Hartmann with Bieck does not result in the present invention.



**HARTMANN ET AL.**

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**BIECK ET AL.**

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**PORCELLI**

Particularly , as seen above in Fig. 1 of Hartmann, the flat fingers in Hartmann are "substantially resilient to deformation yet, to an extent rigidly formable into many different orientations" (col. 2, lines 60-62) whereas in Bieck they are moveable by a complex spring arrangement running around the outside of the receptacle 12. Contrary to the Examiner's assertion, it is only through improper hindsight reasoning in light of Applicant's disclosure to combine such references in the manner set forth above.

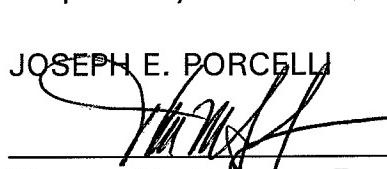
As set forth in Appellants' Appeal Brief, even after KSR, it remains necessary to identify some reason that would have led one skilled in the art to modify the prior art in a particular manner to establish prima facie obviousness of a new claimed invention. Accordingly, since Bieck does not disclose or suggest V-shaped fingers or fingers which define a point as set forth in the claims and one having ordinary skill in the art would not recognize the interchangeability of the fingers in Hartmann with those in Bieck, Claims 18 and 20 are patentable over the cited references.

Similarly, for the reasons discussed above, the rejections of Claim 21 and 22 must also fail since Bieck does not disclose the flat, resilient V-shaped fingers, as claimed either alone or in combination with the other references.

Therefore, it is respectfully submitted that the claims pending on Appeal are patentable over the cited references.

Respectfully submitted,

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